

**REMARKS****Summary of the Office Action**

In the Office Action claims 1, 3, 5 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,553,044 to Tanaka (hereinafter "Tanaka") in combination with U.S. Patent No. 6,424,614 to Kawamura et al. (hereinafter "Kawamura") and U.S. Patent No. 5,428,597 to Satoh et al. (hereinafter "Satoh").

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka in combination with Kawamura and Satoh and further in view of Yamaguchi et al. (hereinafter "Yamaguchi").

Claims 11 and 13, while objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form.

**Summary of the Response to the Office Action**

Applicant has canceled claim 3 without prejudice or disclaimer. Claims 2, 4, 6, 8, 10, 12 and 14 are currently withdrawn from consideration as being directed to a non-elected species. Applicant has amended claims 1 and 7 to differently describe aspects of embodiments of the disclosed invention. Accordingly, claims 1-2 and 4-14 are currently pending with claims 1, 5, 7, 9, 11 and 13 currently under consideration.

**Rejections under 35 U.S.C. §103(a)**

Claims 1, 3, 5 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka in combination with Kawamura and Satoh. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka in combination with Kawamura and Satoh and further in view of Yamaguchi. Applicant has canceled claim 3 without prejudice or disclaimer, rendering the rejection of this claim moot. Applicant has amended claims 1 and 7 to differently describe aspects of embodiments of the disclosed invention. To the extent that these rejections might be deemed to still apply to the claims as newly-amended, they are respectfully traversed for at least the following reasons.

Applicant respectfully submits that the multi-layered disc disclosed and recited in newly-amended claims 1 and 7 in connection with embodiments of instant invention, includes a non-obvious combination of features. For example, newly-amended claim 1 recites that the multi-layered disc includes “a plurality of recording layers laminated with each other in a direction of a normal line of said recording layers, in each of which an information data recording area for recording information data and a control data recording area for recording control data to control an operation of recording and/or reproducing the information data are disposed on a same plane, the control data being recorded by a CAV (Constant Angular Velocity) method over a plurality of tracks in said control data recording area, the control data including a control data being recorded as a PEP (Phase Encoded Part) signal, said control data recording area in each of said recording layers being disposed such that said control data recording area of one of said recording layers is not superimposed with said control data recording area of another of said recording layers in the direction of the normal line.”

Applicant respectfully submits that, according to embodiments of the present invention, it is possible to prevent control data recorded in a control data recording area from superimposing or overlapping itself with other control data recorded in another control data recording area. As a result of these advantageous features associated with embodiments of the present invention, it is possible to accurately reproduce the control data.

Additionally, it is possible to accurately reproduce, with relative ease, the control data without having to utilize a tracking servo (i.e. with the tracking servo being open), because the control data is recorded by a CAV method and is also recorded as a PEP signal (see FIG. 9, FIG. 11 and its corresponding description).

Applicant respectfully submits that none of the cited Tanaka, Kawamura and Satoh references, whether taken separately or in combination, discloses the aforementioned novel features associated with embodiments of the present invention, such as the combination of the control data being recorded as a PEP signal and also being recorded by the CAV method.

In Kawamura, a CAV method type of disc is disclosed, but Kawamura indicates merely that the CAV method type of disc can be used because of its simplicity. However, Kawamura does not include any discussion that suggests using the CAV method type of disc in order to accurately and relative easily reproduce the control data. On the other hand, embodiments of the present invention involve a combination of both the CAV method and the PEP signal, which is not disclosed in any of cited Tanaka, Kawamura and Satoh references. Applicant respectfully submits that this combination of the CAV method and the PEP signal results in the multi-layered disc reproducing apparatus

reproducing the control data accurately and with relative ease. Applicant respectfully submits that this provides a substantial advantage over prior arrangements that is neither shown nor suggested in Tanaka, Kawamura and Satoh. Moreover, Applicant respectfully submits that the advantage of these embodiments associated with the present invention cannot be achieved by disclosures of the cited references. In particular, the combination of both the CAV method and the PEP signal features result in a significant improvement in control data reproduction which is not disclosed to any extent in Tanaka, Kawamura and Satoh.

Applicant respectfully submits that the object of Kawamura is to provide a data recording medium that facilitates translation from one layer to another at a high speed and enables quick access. With consideration of this object and the associated disclosure of Kawamura, Applicant respectfully submits that the combination of both the CAV method and the PEP signal features disclosed in connection with embodiments of the present invention is not obvious to one having ordinary skill in the art because the object disclosed in Kawamura is quite different from that disclosed in each of Tanaka and Satoh and also is quite different from the objects disclosed in connection with the instant application. For example, Applicant respectfully submits that the description regarding the CAV method in Kawamura does not provide any suggestion or motivation to make the multi-layered disc of embodiments of the present invention, which includes the combination of both the CAV method and the PEP signal.

Accordingly, for at least the foregoing reasons, Applicant respectfully submits that newly-amended independent claim 1 is in condition for allowance over the applied art of record. Applicant also respectfully submits that newly-amended independent claim 7 is in condition for

allowance for similar reasons as those asserted above with regard to newly-amended independent claim 1.

Accordingly, Applicant respectfully asserts that the rejections under 35 U.S.C. § 103(a) should be withdrawn because none of Tanaka, Kawamura and Satoh, whether taken singly or combined, teach or suggest each feature of independent claims 1 and 7, as amended. MPEP § 2143.03 instructs that "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 409 F.2d 981, 180 USPQ 580 (CCPA 1974)." Furthermore, Applicant respectfully asserts that dependent claims 5, 9, 11 and 13 are allowable at least because of their dependence from claim 1 or 7 and the reasons set forth above. It is respectfully submitted with regard to the rejection of dependent claim 9 under 35 U.S.C. § 103(a) that the applied reference to Yamaguchi does not cure the above-discussed deficiencies of Tanaka, Kawamura and Satoh. Moreover, the Examiner is thanked for the indication that claims 11 and 13, while objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form. In light of the foregoing discussion, Applicant respectfully requests that the objection to claims 11 and 13 be withdrawn.

### **CONCLUSION**

In view of the foregoing, Applicant respectfully requests withdrawal of the outstanding rejections and objections and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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